IN THE HIGH COURT OF JUDICAUTRE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 708 OF 2005
IN
SUIT NO. 2781 OF 2001

Hanjarmagar Co-op. Hsg. Soc.
No. 1 Ltd. and Ors. ... Plaintiffs

Versus

B.M.C. & Ors. ... Defendants

Ms. B. D'Souza i/by M.P. Vashi & Associaets for
Plaintiff.

Mr. K.N. Gaikwad for Defendant No. 1.

Mr.S.I. Menon for Defendant Nos. 2 to 5.

CORAM : F.I. REBELLO,J.
DATED : AUGUST 26, 2005

P.C.

. The order was passed on 23.1.2004 dismissing the motion on the ground that the counsel has no instructions. The motion was on board pursuant to the order dated 29.12.2003 of the appellate bench of this court not interfering with the ad interim relief granted, however, with a request to the Single Judge to expedite the hearing of the notice of motion.

. The present motion has been taken out on 9.2.2005. There is no application for condonation of delay in taking out the motion. Apart from the relief of recalling the order dated 23.1.2004 various other substantive reliefs have been prayed in the motion. These releifs cannot be considered in this motion. At the highest, what can be considered is prayer Clause (a).

. On behalf of the contesting defendants, their learned counsel points out that the motion was dismissed on the ground of no instructions. The counsel for the parties was very much there. There is no application for condoning the delay in not applying for setting aside the order within 30 days of the order being passed. In these circumstances, also the motion needs to be dismissed.

. The learned counsel for the contesting respondents to that extent is right. However, that will result in further adjournment in order to enable the Plaintiff to take out separate motion for condonation of delay. In view of that, counsel for the parties agree that the motion itself can be taken up and disposed of on merits.

. Considering what is set out therein, order dated 23.1.2004 is recalled. Suit to be placed on board for hearing. It is made clear that ad interim relief which was vacated pursuant to dismissal of the order dated 23.1.2004 will not be revived by this order. The order is further subject to Plaintiffs paying cost in favour of Defendant No. 2 quantified at Rs.5,000/- within two weeks from today. Needless to that that the payment of costs is condition precedent to the recalling of the

order dated 23.1.2004. Motion stands disposed of accordingly.

(F.I. REBELLO,J.)